

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BARBARA TWEED,

Plaintiff,

vs.

Case No. 05-70822  
HON. GEORGE CARAM STEEH

MICHIGAN LUMBER COMPANY,  
a Michigan corporation,

Defendant.

\_\_\_\_\_ /

AMENDED ORDER DISMISSING ACTION WITHOUT PREJUDICE

It has come to the court's attention that its order dismissing this action without prejudice, entered October 18, 2005, contained a clerical error which is hereby corrected under Fed. R. Civ. P. 60(a). That order indicated there had been no response to plaintiff's Fed. R. Civ. P. 41 (a)(2) motion to dismiss without prejudice, which asserted that a necessary additional plaintiff to this matter was a resident of Michigan, and that his joinder would destroy this court's subject matter jurisdiction, based on diversity of citizenship.

In fact, defendant did file a response to the motion, on October 6, 2005, and requested that the matter be dismissed with prejudice and that the court assess costs and attorney fees for having brought the action in Federal Court "by improperly or collusively invoking Federal Court diversity jurisdiction in violation of 28 U.S.C. 1359."

The court is not convinced by defendant's response that either dismissal with prejudice or an assessment of costs and/or attorney fees is appropriate here. Plaintiff has requested dismissal without prejudice by motion to the court in the absence of

defendant's stipulation to the same. The rule requiring action of the court is for the purpose of protection of the nonmovant from unfair treatment. Grover v. Eli Lilly and Company, 33 F.3d 716, 718 (6<sup>th</sup> Cir. 1994) (citation omitted). The district court is given discretion in making this decision, and "an abuse of discretion is found only where the defendant would suffer 'plain legal prejudice' as a result of a dismissal without prejudice, as opposed to facing the mere prospect of a second lawsuit." Id., citing Cone v. West Virginia Pulp & Paper Co., 330 U.S. 212, 217 (1947).

Defendant does not convince the court that it will suffer "plain legal prejudice" from dismissal of this lawsuit without prejudice. The court therefore confirms its prior decision granting plaintiff's motion for dismissal without prejudice, and finds an award of costs or attorney fees for either party to this matter would be inappropriate.

IT IS SO ORDERED.

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2005

#### CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on October 31, 2005, by electronic and/or ordinary mail.

S/Josephine Chaffee  
Secretary/Deputy Clerk